

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

J. BARRIOS, HERNANDEZ, WHITE, and
GUTIERREZ,

Defendants.

Case No. 1:23-cv-00054-HBK (PC)

ORDER TO SHOW CAUSE WHY
DEFENDANT GUTIERREZ SHOULD NOT
BE DISMISSED FROM THIS ACTION FOR
FAILURE TO PROVIDE SUFFICIENT
INFORMATION TO EFFECTUATE
SERVICE

THIRTY (30) DAY DEADLINE

Plaintiff Durrell Anthony Puckett (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants J. Barrios, Hernandez, White and Gutierrez for unconstitutional conditions of confinement in violation of the Eighth Amendment.

On June 26, 2023, the Court issued a second order directing service on Defendant Gutierrez via the Court’s E-Service pilot program for civil rights cases for the Eastern District of California. (Doc. No. 35). The order included the following information regarding Defendant Gutierrez: “Correctional Officer at CSP-Corcoran, who worked 3rd watch (5) days a week on 3A03 2021 Jan-Feb. He was Officer Dustin White’s partner. (*Id.* at 2). On August 8, 2023, the Court received information from CDCR that Defendant Gutierrez could not be identified. (Doc. No. 39). On October 2, 2023, the Court received information from the U.S. Marshal that Defendant Gutierrez could not be identified. (Doc. No. 40).

1 Federal Rule of Civil Procedure 4(m) provides as follows:

2 If a defendant is not served within 120 days after the complaint is filed, the
3 court—on motion or on its own after notice to the plaintiff—must dismiss the
4 action without prejudice against that defendant or order that service be made
5 within a specified time. But if the plaintiff shows good cause for the failure, the
6 court must extend the time for service for an appropriate period.

6 Fed. R. Civ. P. 4(m).

7 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the
8 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
9 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
10 summons and complaint, and . . . should not be penalized by having his or her action dismissed
11 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
12 duties required of each of them” *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990). “So
13 long as the prisoner has furnished the information necessary to identify the defendant, the
14 marshal’s failure to effect service is ‘automatically good cause’” *Walker v. Sumner*, 14 F.3d
15 1415, 1422 (9th Cir. 1994), abrogated on other grounds by *Sandin v. Connor*, 515 U.S. 472, 115
16 (1995). However, where a *pro se* plaintiff fails to provide the Marshal with accurate and
17 sufficient information to effect service of the summons and complaint, the Court’s *sua sponte*
18 dismissal of the unserved defendant is appropriate. *Walker*, 14 F.3d at 1421–22.

19 Here, the U.S. Marshal attempted to electronically serve Defendant Gutierrez with the
20 information that Plaintiff provided. However, the Marshal was informed that there was not
21 enough information to identify Defendant Gutierrez for service of process. If Plaintiff is unable
22 to provide the Marshal with the necessary information to identify and locate this defendant,
23 Defendant Gutierrez shall be dismissed from this action, without prejudice.

24 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause
25 why Defendant Gutierrez should not be dismissed without prejudice from the action at this time.

26 ACCORDINGLY, it is ORDERED:

- 27 1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause
- 28 why Defendant Gutierrez should not be dismissed from this action; and

- 1 2. The failure to respond to this order or the failure to show cause will result in the dismissal
2 of any unidentified defendant from this action, due to Plaintiff's failure to serve process
3 pursuant to Federal Rule of Civil Procedure 4(m).

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5 Dated: October 4, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE